

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.53 Manager	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is a weatherization contracting business. The worker was engaged to perform services as an Assistant Production Manager, whose responsibilities included project management, supervising crews, and working with general contractors. The firm considered the worker's services to have been performed in the capacity of independent contractor, and as a result issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The firm provided the worker with general production information. The worker received training on the use of foam machines, cellulose machines, and he received training in building science. Energy saving companies awarded bids to the firm. The firm then selected the worker to be the project manager to oversee projects. The worker performed his services personally, with helpers engaged by the firm, and paid by the firm. Work methods were determined by both the firm and worker. Problems and complaints that the worker could not resolve were reported to the firm for resolution. The worker was required to provide the firm with daily production reports, and daily site reports, via text or e-mail. The worker was required to attend on site meetings at customer locations.

The firm provided all of the materials, equipment, and vehicles needed to perform the services. The worker incurred transportation expenses. The firm reimbursed for hotel expenses. The firm paid the worker on an hourly wage basis. Customers paid the firm for services. The worker did not incur economic loss or financial risk with regard to the services he performed for the firm.

Workers' compensation insurance was carried on the worker. No employment benefits, with the exception of holiday pay, were made available to the worker. The worker did not perform similar services for others, nor did he advertise as being available to perform similar services for others while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov